

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

JUL 25 2014

JAMES W. MCCORMACK, CLERK
By: [Signature]
DEP CLERK

RICKEY BAKER,

PLAINTIFF

V.

KOPPERS, INC.,

DEFENDANT

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CASE NO.: 4:14 cv 436 KGB

This case assigned to District Judge
appears before Magistrate Judge.

Baker
Deere

COMPLAINT

Comes now Rickey Baker, by his counsel, James W. Stanley, Jr., and for his cause of action states against the Defendant unto the court as follows:

1. Plaintiff is a citizen resident of Lonoke County, Arkansas. Defendant is a Pennsylvania corporation doing business in Pulaski County, Arkansas. The events complained of herein incurred in Pulaski County, Arkansas.

2. This court has jurisdiction pursuant to 29 U.S.C. 1132 providing for judicial review of decisions by Plan Administrators, such as Defendant herein, under the Employee Retirement Income Security Act (ERISA), as amended. Jurisdiction is also provided by 28 U.S.C. 1332, diversity of citizenship, as the amount in controversy, exclusive of interest and costs exceeds \$75,000.00.

3. Plaintiff was a long term employee of Koppers, Inc. and was employed by Defendant at its North Little Rock tie plant facility since June, 1992. As a result of his long term employment, Plaintiff was potentially eligible to be retired under a disability benefit plan administered by Koppers, through its provider, AETNA.

4. To be eligible for disability retirement Plaintiff was required to have at least 10 years of service with the Defendant; additionally, Plaintiff has to establish he met the disability standards of the Defendant at the time he ceased employment with Koppers in December, 2011.

5. Plaintiff made formal application for a disability retirement with Defendant, submitted substantial medical documentation showing his total disablement, together with proof from the Social Security Administration's Administrative Law Judge he had been found totally disabled by that agency. But in spite of such proof, Defendant formally denied Plaintiff's application for disability retirement benefits under this plan as evidenced by the attached Exhibit A.

6. The decision denying Plaintiff Baker his disability retirement by the Defendant and its Plan Administrator, AETNA, was arbitrary, capricious, not supported by substantial evidence, and constituted an abuse of discretion and therefore must be reversed by this court pursuant to 29 U.S.C. 1132, et. seq.

7. Plaintiff requests this court closely review the entire record on appeal; that it find there is no evidence supporting the Defendant's conclusion he was not disabled (in fact, all of the evidence indicates he was); it's decision was therefore arbitrary and capricious; it reverse such decision by the Defendant and award him disability retirement benefits and to direct Defendant to pay same, or alternatively it remand these proceedings to correct errors that will be more specifically set forth in Plaintiff's subsequent pleadings.

8. ~~Plaintiff is entitled to reasonable attorney's fees pursuant to 29 U.S.C. 1132(g).~~

WHEREFORE, premises considered, Plaintiff Rickey Baker prays this court judicially review the final decision by the Plan Administrator, Koppers, Inc., pursuant to 29 U.S.C. 1132; it find such denial of Plaintiff's application for a disability retirement benefit from Koppers was arbitrary, capricious, not supported by substantial evidence, constituted an abuse of discretion, and therefore the Plan Administrator's decision must be reversed and such disability retirement benefits granted or this cause be remanded with instructions to the Defendant for the taking of further actions, consistent with the court's rulings and findings, together with attorney's fees.

Respectfully submitted,

/s/James W. Stanley, Jr.

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**EXHIBIT
A**

Lisa Neugebauer
Pension Administrator



May 21, 2014

Mr. Rickey Baker
275 Allison Lane
Lonoke, AR 72086

Koppers Inc.
436 Seventh Avenue
Pittsburgh, PA 15219-1800
Tel 412 227 2364
Fax 412 227 2138
Neugebauerlc@koppers.com
www.koppers.com

Dear Mr. Baker:

We received your Report of Medical Examiner Form and forwarded it to an independent physician for review.

As quoted in the Retirement Plan For Koppers Inc. Section 2.1s – “A Participant who is an Hourly Employee shall be deemed to be “totally and permanently disabled” if (1) he has been totally incapacitated for at least six months by bodily injury or disease as the result of which he is unable to engage in further employment with the Employer or in any other regular gainful employment or occupation, except that employment for purposes of rehabilitation as determined by the Company shall not be considered to be gainful employment, (2) such total incapacity shall, in the opinion of a qualified physician or clinic designated by the Administrator, presumably be permanent and continuous for the remainder of his life, and (3) such incapacity is not the result of service in the armed forces of the United States or any country for which a service connected disability retirement benefit is payable; or does not consist of chronic alcoholism or addiction to narcotics; or is not the result of an intentionally self-inflicted injury; or was not incurred nor resulted from engaging in a felonious criminal enterprise. Applicants for a Disability retirement benefit shall be required, as a condition of eligibility, to undergo any medical examination deemed necessary by the Administrator, and such examination shall be made by a physician or clinic designated by the Administrator”.

The Report of Medical Examiner Form has been reviewed and found that they “represent very general clinical impressions and do not meet the criteria for sufficient medical evidence to support disability retirement”.

Regards,

A handwritten signature in cursive script, appearing to read "Lisa Neugebauer", written in black ink.

Lisa Neugebauer

cc: James W. Stanley, Jr.
Stanley Law Firm, P.A.
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Little Rock, AR 72201